

1954

Sept. 2

Mr. Ned Spaulding, Secretary Ex-Officio,  
Board of Registration for Architects  
Hudson, New Hampshire

Dear Mr. Spaulding:

Please excuse my delay in answering your recent letter which was received at this office during my vacation.

You have inquired whether the Secretary of the Board of Registration for Architects must be a member of the Board or may be the Secretary of the Board of Registration for Professional Engineers or any other person chosen by the Board. It is my opinion that the Secretary must be either a member of the Board or the Secretary of the Board of Registration for Professional Engineers, who will then serve as Secretary and member ex-officio.

Chapter 197, section 6, provides that "The Board shall elect annually a chairman, a vice-chairman and a secretary. The secretary of the state board of registration for professional engineers may serve as secretary and member ex-officio of the state board of registration for architects but he shall have no vote in its meetings." The section states initially that a secretary shall be elected annually by the Board. By use of the word "elect," the Legislature can only have intended that the election be made from the Board itself, whereas if it had been intended that the secretary was not to be a Board member, a term such as appoint or employ would have been used.

The section then further provides one exception in that the Secretary of the Board of Registration for Professional Engineers may be Secretary ex-officio of this Board. It is significant that he is also to be a member ex-officio, showing the intent that the Secretary shall be a member of the Board.

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C O P Y

Mr. Ned Snaulding

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In your letter you state that on July 19, 1954, the Board amended its by-laws so as to provide that biennially the Board shall "by election from among its members select a Chairman and Vice Chairman and shall elect either from its members, a Secretary, or elect a Secretary Ex-Officio." The aforementioned section 6 clearly states that the officers of the Board shall be chosen annually. This legislative pronouncement must be followed by the Board and cannot be changed by by-law.

An ex-officio officer may not be elected as he is by definition that officer by virtue of his holding another office. If the Board wishes the Secretary of the Board of Engineers to also be its Secretary it may so designate and he then becomes Secretary by virtue of being Secretary of the Board of Engineers as authorized by said section 6. The Secretary ex-officio may only be the Secretary of the Board of Engineers, and for the reasons before stated the Board may not elect to the office of Secretary a non-member of the Board.

Very truly yours,

Richard C. Duncan  
Assistant Attorney General

RCD:HP